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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In re Applications of	)	MM Docket No. 99-150
	)	
READING BROADCASTING, INC.	)	File No. BRCT-940407KF
	)	
For Renewal of License of	)	
Station WTVE(TV), Channel 51	)	
Reading, Pennsylvania	)	
	)	
and	)	
	)	
ADAMS COMMUNICATIONS	)	File No. BPCT-940630KG
CORPORATION	)	
	)	
For Construction Permit	)	

To: Administrative Law Judge Richard L. Sippel

MOTION TO COMPEL DISCLOSURE OF FEE ARRANGEMENTS

1. Pursuant to the Presiding Officer's instructions at the Prehearing Conference held on October 19, 1999, and the *Order*, FCC 99M-63 (released Oct. 21, 1999), Reading Broadcasting, Inc. ("Reading"), by its attorneys, hereby submits the relevant points and authorities regarding the scope of attorney-client privilege surrounding fee arrangements. In view of the authority presented, Reading requests the Presiding Officer to compel the deponent, Howard N. Gilbert, to disclose fee arrangements, including all amendments thereto, with his company's lawyers in this proceeding and the comparative renewal proceeding involving Monroe Communications Corporation ("Monroe"), MM Docket Nos. 83-575 and 83-576. Reading also asks the Presiding Officer to compel Adams to produce copies of

all retainer letters between Bechtel & Cole and Monroe, and Bechtel & Cole and Adams, together with all amendments thereto.

2. On October 14, 1999, counsel for Reading deposed Howard N. Gilbert, a principal of Adams Communications Corporation ("Adams"), on matters relevant to determining which of the pending applications in this proceeding would, on a comparative basis, better serve the public interest. During the deposition, counsel for Reading asked Mr. Gilbert to disclose the fee arrangements between Adams and its counsel, Bechtel and Cole, Chartered. Counsel for Reading also asked Mr. Gilbert to disclose the fee arrangements between Monroe Communications Corporation ("Monroe"), a separate entity in which Mr. Gilbert was a principal, and Bechtel & Cole, Chartered, Monroe's legal counsel.[1] On the advice of counsel, Mr. Gilbert refused to respond to any question posed regarding fee arrangements on the basis of attorney-client and work product privileges.

3. Reading's purpose for inquiring into the fee arrangements is to determine what type of fee payment is to be made in the event the proceeding ends in settlement. This line of questioning is in the public interest because Adams is

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[1] Monroe, represented by Bechtel & Cole, Chartered, filed a competing application against Harriscope of Chicago d/b/a Video 44 ("Video 44"). *See Video 44*, 102 FCC 2d 419 (I.D. 1985), *remanded in part and certified in part*, 102 FCC 2d 408 (Rev. Bd. 1985), *rev. granted*, 103 FCC 2d 1204 (1986), *recon. granted in part*, 3 FCC Rcd 757 (1988), *on remand*, 3 FCC Rcd 3587 (Rev. Bd. 1988), *rev. denied*, 4 FCC Rcd 1209 (1989), *remanded sub nom. Monroe Communications Corp. v. FCC*, 900 F.2d 351 (D.C. Cir. 1990), *application granted*, 5 FCC Rcd 6383 (1990), *recon. denied*, 6 FCC Rcd 4948 (1991). Although Monroe was ultimately awarded the construction permit for this location, it entered into a settlement agreement wherein Monroe dismissed its application, allowing the renewal of Video 44's license, in exchange for payments totaling over $17.5 million plus interest. *See Order*, FCC 92I-097 (released Dec. 24, 1992) (provided herewith as Attachment A).

not entitled to receive any credit for its direct case herein if its application was filed for purposes of reaching a settlement rather than constructing and operating a television station on Channel 51 in Reading, Pennsylvania. *See Implementation of Section 309(j) of the Communications Act*, 13 FCC Rcd 15920 at ¶214 (1998).

4. Reading requests that the Presiding Officer order full and complete disclosure of the fee arrangements between Adams and its counsel in this proceeding in order that Reading may determine whether these arrangements provide an incentive for settlement in lieu of obtaining the permit in question, or any other arrangement that might evince a speculative purpose in Adams' application, regardless of whether the parties have characterized their agreement as a contingency fee, hourly rate, bonus, or otherwise. Should these arrangements provide for any amount of compensation to be determined in any manner other than a straight hourly basis, Reading also seeks any and all information that would indicate any events as to the occurrence or nonoccurrence upon which payment is conditioned.

5. The precise arrangement between Adams and its counsel is highly relevant to this proceeding, as the existence of a fee arrangement that provides any type of incentive for settlement would provide evidence that Adams may have filed its application for speculative purposes and that Adams has no real interest in operating WTVE(TV). *See WWOR-TV, Inc.*, 6 FCC Rcd 4350 ¶44 (ALJ 1991) (finding the 10% settlement bonus provided for in the retainer agreement to be relevant evidence of an intent to settle), *motion to strike denied*, 7 FCC Rcd 636

(1992), *affirmed sub nom. Garden State Broadcasting Ltd. Partnership v. FCC*, 996 F.2d 386 (D.C. Cir. 1993).

6. The details of the fee arrangement between Bechtel & Cole and Monroe are likewise relevant. In the event there were fee arrangements between Monroe and Bechtel & Cole that somehow linked all or part of the attorneys' compensation to settlement, it would be evidence of a possible pattern of litigation with settlement in mind. *See WWOR-TV,* 6 FCC Rcd 4350, ¶44 (considering, as "other evidence of a settlement intent," that the lawyers retained by the challenger had "settled the renewal cases that they litigate with a marked degree of consistency.")

7. A review of case law reveals that fee arrangements are neither confidential communications nor work product, and are therefore not protected by attorney-client privilege except in extremely limited circumstances. Courts in the District of Columbia have recognized that "[t]he attorney-client privilege, which exists to encourage full, free disclosure by clients to their attorneys, does not support protection of the amount of the fee paid for the services rendered." *McSurely v. McAdams*, 1981 U.S. Dist. LEXIS 17639, *12 (D.D.C. 1981) (citing *United States v. Sherman*, 627 F.2d 189, 192 (9th Cir. 1980)). *See also, e.g., In re Shargel*, 742 F.2d 61, 63 (2d Cir. 1984) (observing that "[a]bsent special circumstances, disclosure of the identity of a client and fee information stand on a footing different from communications intended by the client to explain a problem to the lawyer in order to obtain legal advice"); *In re Grand Jury Investigation*, 631 F.2d 17, 19 (3rd Cir. 1980), *cert. denied*, 449 U.S. 1083 (1981) (there is a "general

rule that fee information does not come within the attorney-client privilege"); *In re Semel*, 411 F.2d 195, 197 (3rd Cir. 1969), *cert. denied*, 396 U.S. 905 (1969) (noting that "the fact of a retainer . . . and the amount of the fee do not come within the privilege of the attorney-client relationship"); *In re Michaelson*, 511 F.2d 882 (9th Cir. 1975), *cert. denied*, 421 U.S. 978 (1975); and *In re Freeman*, 708 F.2d 1571 (11th Cir. 1983).

8. While this motion assumes that the laws of the District of Columbia govern the issue presented, the answer would be no different in Illinois, where Adams maintains its principal place of business. *See Witnesses Before the March 1980 Grand Jury*, 729 F.2d 489, 491 (7th Cir. 1984) (observing that "[t]he general rule is well established that information regarding a client's fees is not protected by the attorney-client privilege because the payment of fees is not a confidential communication between the attorney and client") (citing *In re Walsh*, 623 F.2d 489 (7th Cir. 1980), *cert. denied*, 449 U.S. 994 (1980)); *see also United States v. Jeffers*, 532 F.2d 1101 (7th Cir. 1976), *vacated in part on other grounds*, 432 U.S. 137 (1977).

9. As the question of improper motive is highly relevant to this proceeding, and neither Gilbert, Adams, nor their attorneys have any colorable claim of attorney-client privilege with respect to the requested information, Reading respectfully requests the Administrative Law Judge to order Mr. Gilbert to disclose the requested fee arrangements and to compel Adams to produce copies of all

retainer letters between Bechtel & Cole and Monroe, and between Bechtel & Cole and Adams, together with all amendments thereto.

Respectfully submitted,

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October 21, 1999

ATTACHMENT A

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FCC 92I-097
30540

In re Applications of	)	
	)	
HARRISCOPE OF CHICAGO, INC. et al. A Joint Venture d/b/a VIDEO 44	)	MM DOCKET NO. 83-575 File No. BRCT-820802J9
	)	
For Renewal of License of Station WSNS-TV, Channel 44 Chicago, Illinois	)	
	)	
and	)	
	)	
MONROE COMMUNICATIONS CORPORATION	)	MM DOCKET NO. 83-576 File No. BPCT-821101KH
	)	
For a Construction Permit	)	

ORDER

Adopted: December 23, 1992 ; Released: December 24, 1992

1. This order approves a settlement agreement dismissing the application of Monroe Communications Corporation, the challenger in this comparative renewal proceeding.

I. BACKGROUND

2. In this case, after lengthy proceedings,[1] the Commission denied Video 44 renewal of its license for station WSNS-TV, Channel 44, in Chicago, Illinois and granted Monroe Communications Corporation's mutually exclusive application for a construction permit. Video 44, 5 FCC Rcd 6383 (1990), recon.

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[1] Video 44, 102 FCC 2d 419 (I.D. 1985), remanded in part and certified in part, 102 FCC 2d 408 (Rev. Bd. 1985), rev. granted, 103 FCC 2d 1204 (1986), recon. granted in part, 3 FCC Rcd 757 (1988), on remand, 3 FCC Rcd 3587 (Rev. Bd. 1988), rev. denied, 4 FCC Rcd 1209 (1989), remanded sub nom. Monroe Communications Corp. v. FCC, 900 F.2d 351 (D.C. Cir. 1990).

denied, 6 FCC Rcd 4948 (1991), appeal pending sub nom. Harriscope of Chicago, Inc. v. FCC, No. 91-1455 (D.C. Cir. Sept. 19, 1991). The Commission found that Video 44 was not entitled to a renewal expectancy based on the merit of its past programming and that Monroe's proposal was superior to Video 44's on comparative grounds. 5 FCC Rcd at 6385 ¶ 18. Because Video 44 would not prevail in any event, the Commission did not reach allegations that Video 44 presented obscene programming in violation of 18 U.S.C. § 1464. Id. at 6385 ¶ 19.

II. SETTLEMENT AGREEMENT

3. The parties now propose to settle this case.[2] Under the terms of the settlement, Video 44's application would be renewed and Monroe would dismiss its application in return for payments totalling $17,676,424 plus interest.[3] The payments would be made in two installments. The first installment, of $11,666,667 plus interest, would made upon the finality of a Commission order dismissing Monroe's application. Recognizing that Video 44's application could not be renewed until the Commission resolves the allegations concerning obscene programming, the parties provide that a second installment, of $6,009,757 plus interest, would be paid after a final Commission order granting renewal of Video 44's license. The payment of the first installment and the dismissal of Monroe's application are not contingent on the renewal of Video 44's license.

4. The parties assert that approval of the settlement would serve the public interest by eliminating the need for further protracted litigation, by reducing the uncertainty over the future of Channel 44, and by allowing the continuation of the station's current, exemplary Spanish language programming. The parties recognize that the Commission cannot renew Video 44's application without further Commission action disposing of the obscenity question. The parties urge the Commission to take such action and have submitted a separate motion addressing the merits

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[2] Before the Commission are: (1) a Joint Request for Approval of Settlement Agreement, Dismissal of Monroe Application and Grant of Video 44 Application, filed October 28, 1992, by Video 44 and Monroe Communications Corporation, and (2) comments, filed November 6, 1992 by the Mass Media Bureau. On December 17, 1992, the Court of Appeals granted the parties' request for remand of the record to permit consideration of the settlement proposal.

[3] Because this proceeding was designated for hearing in 1983, it is not subject to limitations on settlement amounts that were subsequently adopted. Formulation of Policies Relating to Broadcast Renewal Applicants, 4 FCC Rcd 4780, 4788 ¶ 59 (1989).

of the obscenity question.[4]

5. Additionally, Video 44 and Monroe have each submitted a declaration stating that it did not file its application for the purpose of reaching a settlement. The Mass Media Bureau supports approval of the settlement.

III. DISCUSSION

6. We will approve the settlement agreement. Approval of the settlement will serve the public interest by avoiding the need for additional burdensome litigation and expediting the outcome of this proceeding. The settlement is in conformance with the provisions of 47 U.S.C. § 311(d) and 47 C.F.R. § 73.3525. As noted, approval of the settlement does not prejudge the qualifications of Video 44 to remain a licensee in light of the allegations regarding obscene programming. That matter will be considered by the Commission in due course.

IV. ORDERS

7. ACCORDINGLY, IT IS ORDERED, That pursuant to 47 C.F.R. § 0.251(f)(11), the Joint Request for Approval of Settlement Agreement, Dismissal of Monroe Application and Grant of Video 44 Application IS GRANTED, and the attached settlement agreement IS APPROVED.

8. IT IS FURTHER ORDERED, That the application of Monroe Communications Corporation for a construction permit (File No. BPCT-821101KH) IS DISMISSED with prejudice.

Renée Licht
Acting General Counsel

John D. Riffer

By John I. Riffer
Associate General Counsel

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[4] Motion for Resolution of Remaining Issues and Grant of Video 44's application, filed October 28, 1992, by Video 44. The Commission will rule on this motion in a separate order. No opinion is expressed here as to the merits of that motion.

CERTIFICATE OF SERVICE

I, Ellen Wallace, a secretary in the law firm of Holland & Knight LLP, do hereby certify that on October 21, 1999, a copy of the foregoing MOTION TO COMPEL DISCLOSURE OF FEE ARRANGEMENTS was delivered by hand to the following:

The Honorable Richard L. Sippel
Chief Administrative Law Judge
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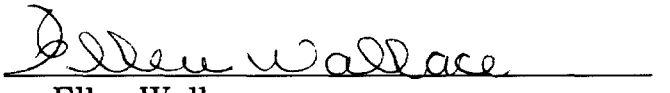

Ellen Wallace

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